

Order

**Michigan Supreme Court
Lansing, Michigan**

January 30, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2020-08

Brian K. Zahra

David F. Viviano

Amendment of Administrative
Order No. 2020-17

Richard H. Bernstein

Elizabeth T. Clement

Megan K. Cavanagh

Elizabeth M. Welch,
Justices

Priority Treatment and New
Procedure for Landlord/Tenant
Cases

Administrative Order No. 2020-17 – Priority Treatment and New Procedure for
Landlord/Tenant Cases

Since the early days of the pandemic, state and national authorities have imposed restrictions on the filing of many landlord/tenant cases. As those restrictions are lifted and courts return to full capacity and reopen facilities to the public, many will experience a large influx of landlord/tenant case filings. Traditionally, the way most courts processed these types of cases relied heavily on many cases being called at the same time in the same place, resulting in large congregations of individuals in enclosed spaces. That procedure is inconsistent with the restrictions that will be in place in many courts over the coming weeks and months as a way to limit the possibility of transmission of COVID-19. In addition, courts are required to comply with a phased expansion of operations as provided under [Administrative Order No. 2020-14](#), which may also impose limits on the number of individuals that may congregate in public court spaces.

Therefore, the Court adopts this administrative order under 1963 Const, Art VI, Sec 4, which provides for the Supreme Court's general superintending control over all state courts, directing courts to process landlord/tenant cases using a prioritization approach. This approach will help limit the possibility of further infection while ensuring that landlord/tenant cases are able to be filed and adjudicated efficiently. All courts having jurisdiction over landlord/tenant cases must follow policy [guidelines](#) established by the State Court Administrative Office. Courts should be mindful of the limitations imposed by federal law (under the CARES Act) as these cases are filed and processed, and follow the guidance in [Administrative Order No. 2020-8](#) in determining the appropriate timing for beginning to consider these cases.

For courts that are able to begin conducting proceedings, the following provisions apply to landlord/tenant actions.

- (1) Each Trial Court with jurisdiction over cases filed under the Summary Proceedings Act, MCL 600.5701, *et seq.*, may accept new filings and begin to schedule hearings as follows:
 - a. In a manner that is consistent with the Return to Full Capacity (RTFC) guidelines referenced in [Administrative Order No. 2020-14](#),
 - b. In a manner that is consistent with each court's most recently-approved local administrative order regarding Return to Full Capacity.
- (2) When a trial court resumes scheduling hearings for recovery of possession of premises under MCL 600.5714 and MCL 600.5775, the following operational priorities apply:
 - a. First priority: complaints alleging illegal activity under MCL 600.5714(1)(b), complaints alleging extensive and continuing physical injury to the premises under MCL 600.5714(1)(d), complaints alleging that the tenant or someone in the tenant's household has caused or threatened physical injury to an individual while on the leased property under MCL 600.5714(1)(e), and complaints alleging that the tenant is trespassing or squatting under MCL 600.5714(1)(f).
 - b. Second priority: complaints alleging nonpayment of rent for 120 days or more.
 - c. Third priority: complaints alleging nonpayment of rent for 90 days or more.
 - d. Fourth priority: complaints alleging nonpayment of rent for 60 days or more.
 - e. Fifth priority: complaints alleging nonpayment of rent for 30 days or more.
 - f. Sixth Priority: All cases described in First Priority through Fifth Priority that are filed after a court has moved to the next priority designation, and any case for recovery of possession of premises where the complaint alleges nonpayment of rent of less than 30 days. Cases filed in a lower numerical priority designation (e.g., a second priority case filed during a court's priority five period) shall be given first consideration in order of priority.
 - g. Courts should proceed to a subsequent priority when all cases in the higher priority have been scheduled for hearing.
 - h. Instead of setting many cases for one hearing time as has traditionally been common, each case must be scheduled for a particular date and time (whether held in-person or remotely) to allow in-person proceedings to be held safely.

- i. A filer who filed a case before April 16, 2020 (the date [Administrative Order No. 2020-8](#) entered) must update the factual allegations in the complaint and file the verification form required by [Administrative Order No. 2020-8](#) before a hearing will be scheduled. The form will allow a filer to indicate that the case was filed before the moratorium period began and therefore, even if a covered dwelling, is not foreclosed from proceeding. If the filer must remove any fees or costs that are prohibited under the CARES Act, the filer must file an amended complaint for any action that proceeds during the moratorium period. The court shall not require an additional filing fee.
- (3) Except as otherwise provided, trial courts must schedule cases filed for an alleged termination of tenancy (as opposed to cases for nonpayment of rent) pursuant to MCL 600.5714 during or after the fifth level of priority described above or after the statutorily-required notice period has elapsed, whichever comes later. A court may consider a termination case before the fifth level of priority upon motion by plaintiff alleging that there is good cause to consider the case earlier for reasons of public safety or other just cause, including but not limited to matters brought under MCL 600.5775.
 - (4) Courts are authorized to proceed with these actions by way of remote participation tools, and encouraged to do so to the greatest extent possible. [Administrative Order No. 2020-6](#) requires that the court scheduling a remote hearing must “verify that all participants are able to proceed in this manner.” Therefore, the summons for each case filed under the Summary Proceedings Act must provide the date and time for remote participation in the scheduled hearing. In addition, the summons must be accompanied by any written information about the availability of counsel and housing assistance information as provided by legal aid or local funding agencies. If a remote hearing is scheduled for the first proceeding, the defendant received personal service pursuant to MCR 2.105(A), and the defendant fails to appear, a default may enter. If a remote hearing is scheduled for the first proceeding and the defendant fails to appear and has not been served under MCR 2.105(A), the court may not enter a default but must reschedule the hearing and mail notice for that rescheduled hearing as an in-person proceeding. Under these conditions, a notice of rescheduled hearing mailed by the court within 24 hours after the initial hearing date is sufficient notice of the rescheduled hearing, notwithstanding any other court rule. Other parties or participants may proceed remotely.
 - (5) All local administrative orders requiring a written answer pursuant to MCL 600.5735(4) are suspended.¹ Unless otherwise provided by this order, a court must comply with MCR 4.201 with regard to summary proceedings.

¹ The local administrative orders include: 1st District Court (Monroe County); 2a District Court (Lenawee County); 12th District Court (Jackson County); 18th District Court (City of

- (6) At the initial hearing noticed by the summons, the court must conduct a pretrial hearing consistent with SCAO guidance. At the pretrial hearing the parties must be verbally informed of all of the following:
- a. Defendant has the right to counsel. MCR 4.201(F)(2).
 - b. The Michigan Department of Health and Human Services (MDHHS), the local Coordinated Entry Agency (CEA), Housing Assessment and Resource Agency (HARA), or the federal Help for Homeless Veterans program may be able to assist the parties with payment of some or all of the rent due.
 - c. Defendants DO NOT need a judgment to receive assistance from MDHHS, the HARA or the local CEA. The Summons and Complaint from the court case are sufficient for MDHHS.²
 - d. The availability of the Michigan Community Dispute Resolution Program (CDRP) and local CDRP Office as a possible source of case resolution. The court must contact the local CDRP to coordinate resources. The CDRP may be involved in the resolution of Summary Proceedings cases to the extent that the chief judge of each court determines, including conducting the pretrial hearing.
 - e. The possibility of a Conditional Dismissal pursuant to MCR 2.602 if approved by all parties. The parties must be provided with a form to effectuate such Conditional Dismissal.
- (7) The pretrial required under this subsection may be conducted by the assigned judge, a visiting judge appointed by SCAO, a magistrate (as long as that magistrate is a lawyer) or a CDRP mediator.
- (8) Except as provided below, all Summary Proceeding Act cases must be adjourned for seven days after the pretrial hearing is conducted. MCL 600.5732. Any party who does not appear at the adjourned date will be defaulted. Cases need not be adjourned for seven days if: the plaintiff dismisses the complaint, with or without prejudice, and without any conditions, if defendant was personally served under MCR 2.105(A) and fails to appear, or where both plaintiff and defendant are represented by counsel and a consent judgment or conditional dismissal is filed with

Westland); 81st District Court (Alcona, Arenac, Iosco, and Oscoda Counties); 82nd District (Ogemaw County); and 95b District Court (Dickinson and Iron Counties).

² See [State Emergency Relief Manual](#), Relocation Services, ERM 303, ERB 2019-005, Page 3 of 7.

the court. Where plaintiff and defendant are represented by counsel, the parties may submit a conditional dismissal or consent judgment in lieu of appearing personally at the second hearing.

- (9) The court may require remote participation in the second, and any subsequent, proceedings, and the court must verify that participants are able to proceed in that manner under [Administrative Order No. 2020-6](#). If a party cannot appear remotely, in-person proceedings must be scheduled that provide for the safety of all parties.
- (10) MCR 4.201(F)(3) is temporarily suspended to the extent that a jury demand must be made in the first response. Instead, if the defendant wants a jury trial, he or she must demand it within seven days of the first response. The jury trial fee, if not waived by the court, must be paid when the demand is made.
- (11) A court shall discontinue prioritization of cases when it has proceeded through all priority phases and no longer has any landlord/tenant filings that allege a breach of contract for the time period between March 20, 2020, and July 15, 2020 (the period in which there was a statewide moratorium on evictions). At that point, the court may notify the regional administrator of its completion of the prioritization process and will not be required to return to the procedure even if a subsequent case is filed that alleges rent owing during the period of the eviction moratorium. A court must continue compliance with all other aspects of this order while the Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19—issued by the Centers for Disease Control and Prevention and published at 85 FR 55292, and extended by order dated January 29, 2021—is in effect.
- (12) In complying with the provisions of the CDC order referenced above and during the pendency of the order, trial courts must:
 - a. Require a plaintiff filing a LT case to also file a verification form indicating whether a declaration has been submitted by defendant or whether the case may proceed because it is not subject to the CDC order’s moratorium. The verification shall be made on a SCAO-approved form, and a plaintiff shall have a continuing obligation to inform the court if a declaration has been submitted by defendant; in addition, a court may accept a declaration prepared pursuant to the CDC order from plaintiff or defendant.
 - b. Accept filings related to LT cases and proceed as follows:
 - (i) For cases that are not subject to the moratorium under the CDC order, the court shall proceed as provided in this order and MCR 4.201.

- (ii) For cases that are subject to the moratorium under the CDC order, the court shall process the case through entry of judgment. A judgment issued in this type of case shall allow defendant to pay or move (under item 4 on DC 105 or similarly on non-SCAO forms) within the statutory period (MCL 600.5744) or by the first day after the expiration of the CDC order, whichever date is later. MCR 4.201(L)(4)(a), which prohibits an order of eviction from being issued later than 56 days after the judgment enters unless a hearing is held, is suspended for cases subject to the CDC moratorium. The 56 day period in that rule shall commence on the first day after the expiration of the CDC order for those cases.
- (13) Each chief judge of a district court shall hold a meeting before January 31, 2021, to evaluate the efficacy of the procedures set out in this order and discuss proposed changes that might improve the process. The meeting invitation must be extended to individuals involved in the local landlord/tenant process, including the following:
- the Michigan Department of Health and Human Services
 - local legal aid associations and other tenant advocacy associations
 - attorneys who appear on behalf of local landlords
 - the local HARA (Housing Assessment and Resource Agency)

The chief judge shall submit a summary of the discussion and proposed recommendations to the regional administrator within two weeks following the meeting.

This order is effective until further order of the Court.

VIVIANO, J. (*dissenting*). I dissent from the Court's decision to extend its previous order administratively suspending the operation of certain laws governing summary landlord-tenant proceedings. When the Court first suspended these laws in October 2020, I dissented because the order was premised solely on an order from the Centers for Disease Control and Prevention (CDC) that relied on dubious legal authority. AO 2020-17, Priority Treatment and New Landlord/Tenant Cases, issued Oct 22, 2020 (VIVIANO, J., *dissenting*), citing Centers for Disease Control and Prevention, *Temporary Halt in Residential Evictions*, 85 Fed Reg 55,292 (Sept 4, 2020). Legislation was subsequently enacted by Congress that specifically referenced and extended the CDC order through January 31, 2021. Consolidated Appropriations Act, 2021 (HR 133), Division N, § 502. When the Court extended this order in December 2020, I concurred because the order then "rest[ed] on a statute duly enacted by Congress and signed by the President" AO 2020-17, Priority Treatment and New Landlord/Tenant Cases, issued Dec 29, 2020 (VIVIANO, J.,

concurring). On January 29, 2021, the CDC issued an order extending its eviction moratorium through March 31, 2021, Centers for Disease Control and Prevention, *Temporary Halt in Residential Evictions* (Jan 29, 2021) <<https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-01292021.pdf>>; however, Congress has not authorized such an extension. Because our order once again rests solely on the CDC order, I dissent for the reasons stated in my initial dissent.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 30, 2021

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk